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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,241	09/03/2004	John F. Baxter JR.	1135.42	5240

21901   7590   01/31/2007
SMITH HOPEN, PA
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EXAMINER
VU, VIET DUY

ART UNIT	PAPER NUMBER
2154	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/31/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<table>
<tr><td rowspan="2">Office Action Summary</td><td>Application No.
10/711,241</td><td>Applicant(s)
BAXTER, JOHN F.</td></tr>
<tr><td>Examiner
Viet Vu</td><td>Art Unit
2154</td></tr>
</table>

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>20 September 2006</u>.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-28</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-28</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>09/05</u>.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____ .

Non-Art Rejections:

1.   The following is a quotation of the second paragraph of 35
U.S.C. 112:

> The specification shall conclude with one or more claims
> particularly pointing out and distinctly claiming the
> subject matter which the applicant regards as his
> invention.

2.   Claims 1-27 are rejected under 35 U.S.C. 112, second
paragraph, as being indefinite for failing to particularly point
out and distinctly claim the subject matter which applicant
regards as the invention.

The following language is vague and indefinite:

In claim 1, line 3, the term "whereby" renders the claims
indefinite because it is not clear whether the limitations
following the phrase are part of the claimed invention. See MPEP
§ 2173.05(d). It is suggested that "whereby" be changed to more
definitive term such as "wherein".

The use of "whereby" can also be found in claims 2, 3, 16,
24, and 26.

Art Rejections:

3.   The following is a quotation of 35 U.S.C. 103(a) which
forms the basis for all obviousness rejections set forth in this
Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1, 3-13 and 15-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Komar, U.S. pat. Appl. Pub. No. 2002/0184647, in view of Strauss et al, U.S. pat. No. 5,790,173.

Per claims 1 and 4, Komar discloses a method for providing media content contemporaneously with the broadcast programming comprising:

a) establishing a media broadcast database wherein the media content is identified from a plurality of broadcast channels (see Komar in page 1, par. 11);

b) receiving a request for the media content contemporaneous with its broadcast, the request comprising a channel field (see page 2, par. 15);

c) generating a timestamp value associated with the time the request was received (page 2, par. 16);

d) querying the broadcast database using the channel field and the timestamp value to identify the content (page 2, par. 16-17);

e) returning the query results to a destination associated with the requestor (page 2, par. 18 and figure 4, step 460).

Komar does not explicitly teach that the media content request contains a requestor identity. The use of one or more user identities (e.g., source address, user ID, password, etc.) to identify the user/requester is common and well known in the art as shown by Strauss (see Strauss in col 20, lines 26-52).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to recognize the use of such user identity in Komar because it would have enabled the system to verify authorized users/requestor for a particular service request.

Per claim 3, an official notice is taken that the use of queue for storing pending requests is well known in the art. It would have been obvious to one skilled in the art to utilize a conventional queue in Komar because it would have enabled the server to accepting multiple requests at the same time.

Per claims 5-10 and 15, it is noted that Komar's teachings are applicable to all conventional broadcast networks and/or analog/digital broadcast contents.

Per claim 11, it is noted that the ordered video/movie program can be viewed/recorded at specific time (i.e., scheduled delivery) (see Komar in page 7, par. 77-80).

Per claims 12-13, <u>Komar</u> also teaches providing the query results with advertisement that is associated with particular program channel (<u>see Komar in page 3, par. 25</u>).

Per claims 16-27, <u>Strauss</u> teaches providing an enhanced telephone system including an IVR system to enable users ordering program contents on demand by using DTMF input on a conventional telephone (<u>see Strauss at the summary</u>).

5.   Claims 14 and 27-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over <u>Komar</u>, and <u>Strauss</u>, and further in view of <u>Eldering</u> et al, U.S. pat. Appl. Pub. No. 2003/0149975.

The combined teachings of <u>Komar</u> and <u>Strauss</u> set forth in item 4 above are still applied. Neither <u>Komar</u> nor <u>Strauss</u> teach providing user targeted ads based upon user's demographic data. Such use of targeted ads is well known in the art as shown in <u>Eldering</u> (<u>see Eldering in page 2, par. 52</u>).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize targeted ads in <u>Komar</u>, i.e., ads provided according to users' demographics because it would have enabled the system to provide more effective ads to the users (<u>see Eldering in page 2, par. 50</u>).

6.   Claim 2 is not rejected on art.

Conclusion:

7.   Any   inquiry   concerning   this   communication   or   earlier
communications   from   the   examiner   should   be   directed   to   Viet   Vu
whose   telephone   number   is   571-272-3977.   The   examiner   can
normally   be   reached   on   Monday   through   Friday   from   7:00am   to
4:00pm.   The   Group   general   information   number   is   571-272-2100.
The Group fax number is 571-273-8300.

       If   attempts   to   reach   the   examiner   by   telephone   are
unsuccessful,   the   examiner's   supervisor,   Nathan   Flynn,   can   be
reached on 571-272-1915.

       Information   regarding   the   status   of   an   application   may   be
obtained   from   the   Patent   Application   Information   Retrieval
(PAIR)   system.   Status   information   for   published   applications   may
be   obtained   from   either   Private   PAIR   or   Public   PAIR.   Status
information   for   unpublished   applications   is   available   through
Private   PAIR   only.   For   more   information   about   the   PAIR   system,
see   http://pair-direct.uspto.gov.   Should   you   have   questions   on
access   to   the   Private   PAIR   system,   contact   the   Electronic
Business Center (EBC) at 866-217-9197 (toll-free).

VIET D. VU
PRIMARY EXAMINER

Art Unit 2154
1/29/07